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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 423

MARYLAND CASUALTY COMPANY,
Petitioner,

vs.

THE SEMINOLE TRIBE OF FLORIDA, INC., CITIZENS NATIONAL BANK OF WEST HOLLYWOOD and UNITED STATES OF AMERICA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on May 13, 1966.

CITATIONS TO OPINIONS BELOW

The District Court did not write an opinion. The opinion of the Court of Appeals, printed in Appendix B hereto, has not been reported as of this date.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 13, 1966. (R-84.) The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED

Is an Indian corporation, engaged in commercial enterprise, immune from an ancillary garnishment action instituted by a judgment creditor of the Indian corporation because of the following provision appearing in the corporate charter:

To sue or be sued; but the grant or exercise of such power to sue and to be sued shall not be deemed a consent by the said corporation or the United States of America to the levy of any judgment, lien or attachment upon the property of The Seminole Tribe of Florida, Inc. other than income or chattels especially pledged or assigned.

Did the Secretary of the Interior in issuing the corporate charter to The Seminole Tribe of Florida, Inc. unlawfully qualify the waiver of immunity to suit of the latter and thereby discriminate against those persons who may be judgment creditors of The Seminole Tribe of Florida, Inc. and deny those persons the equal protection of the law?

Where The Seminole Tribe of Florida, Inc. pledged and assigned to the United States of America certain monies in a checking account but reserved the right to withdraw or draw on the monies did the United States of America have a prior right to the monies over a judgment creditor of the corporation who had garnished the monies?

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

The constitutional provisions involved are Article 1, Section 8, Clause 3 and Amendment V. The statutory provision involved is 25 U.S.C.A., Indians, Section 477.

STATEMENT

THE SEMINOLE TRIBE OF FLORIDA, INC. entered into a contract for the construction of two buildings with Seldomridge Construction Company, which buildings are being used for a private commercial enterprise by THE SEMINOLE TRIBE OF FLORIDA, INC. This contract was approved by the Bureau of Indian Affairs. In connection with this contract MARYLAND CASUALTY COMPANY executed a Performance and Payment Bond wherein one of the conditions was that all labor and materials incorporated in the building would be paid. A sub-contractor who is not involved in this appeal was not paid and instituted a suit against MARYLAND CASUALTY COMPANY to collect the value of the materials he delivered to the job. MARYLAND CASUALTY COMPANY filed a third party complaint against THE SEMINOLE TRIBE OF FLORIDA, INC. alleging that THE SEMINOLE TRIBE OF FLORIDA, INC. had made improper payment of the construction money, and in particular made the final payment to the contractor knowing that the materialman had not been paid.

The case was tried without a jury and the court entered a judgment for the materialman and against MARYLAND CASUALTY COMPANY and in turn entered a judgment in favor of MARYLAND CASUALTY COMPANY and against THE SEMINOLE TRIBE OF FLORIDA, INC. for the amount of the materialman's claim.

After judgment was entered MARYLAND CASUALTY COMPANY instituted an ancillary proceeding in the form of garnishment against the CITIZENS NATIONAL BANK OF WEST HOLLYWOOD who filed an answer admitting that the CITIZENS NATIONAL BANK OF WEST HOLLYWOOD was indebted to THE SEMINOLE TRIBE OF FLORIDA, INC. in the amount of THIRTY-FOUR THOUSAND SIX HUNDRED SIXTY-FIVE and 80/100 DOLLARS ($34,665.80) as a result of a checking account in the name of THE SEMINOLE TRIBE OF FLORIDA, INC. The answer of the CITIZENS NATIONAL BANK OF WEST HOLLYWOOD further referred to a deposit agreement and attached the deposit agreement between the CITIZENS NATIONAL BANK OF WEST HOLLYWOOD, UNITED STATES OF AMERICA and THE SEMINOLE TRIBE OF FLORIDA, INC. to the answer.

The court entered an order dismissing the garnishment proceedings and dissolving the Writ of Garnishment against the CITIZENS NATIONAL BANK OF WEST HOLLYWOOD on the grounds: (1) The Charter of THE SEMINOLE TRIBE OF FLORIDA, INC. prohibited the garnishment proceeding. (2) The funds which were garnished were assigned to the UNITED STATES OF AMERICA and consequently the UNITED STATES OF AMERICA had a superior right to the funds.

The Court of Appeals affirmed the order of the District Court.

REASONS FOR GRANTING THE WRIT

The questions presented are of vital importance and should be decided by this Honorable Court, not only because they involve United States constitutional provisions and a United States statute but because they involve the

rights and liabilities of an Indian corporation engaging in a business with private enterprise.

Counsel for the Bureau of Indian Affairs has informed your Petitioner that this is the first time that a judgment has ever been entered against an Indian corporation.

It is logical to forecast that Indian Tribes will incorporate in the future and that the Indian corporations heretofore formed and hereafter formed will continue to engage and will engage in private and commercial enterprise on a larger basis and in a greater volume as time passes, and therefore the questions presented need to be decided at this time in order that persons who will transact business with these Indian corporations will know their legal position with respect to enforcing their rights against these Indian corporations and can take steps to protect themselves from being placed in the unjust position that the Petitioner finds itself.

This is not a case where the Petitioner has taken unfair advantage of THE SEMINOLE TRIBE OF FLORIDA, INC. or where the latter did not have the benefit of counsel and supervision of the Bureau of Indian Affairs. All of the acts which made THE SEMINOLE TRIBE OF FLORIDA, INC. liable to the Petitioner were approved and done under the supervision of the Bureau of Indian Affairs or the local Indian agent and with the advice of local counsel. Thus this judgment represents an honest debt that should be enforceable.

To deny the enforceability of the judgment would be to place the Petitioner on an unequal basis under the law and deny the Petitioner due process of law. This was not the intent of Congress when they gave the Federal Government the paramount authority to control and manage the affairs of the Indian Tribes. The authority of the Federal

Government under Article 1, Section 8, Clause 3 of the Constitution to manage the affairs of the Indians must be exercised without discrimination and arbitrariness and with due respect to the due process clause of Amendment V of the Constitution.

QUESTION No. 1

Is an Indian corporation, engaged in commercial enterprise, immune from an ancillary garnishment action instituted by a judgment creditor of the Indian corporation because of the following provision appearing in the corporate charter:

> To sue or be sued; but the grant or exercise of such power to sue and to be sued shall not be deemed a consent by the said corporation or the United States of America to the levy of any judgment, lien or attachment upon the property of The Seminole Tribe of Florida, Inc. other than income or chattels especially pledged or assigned.

The Charter proviso does not specifically prevent garnishment and therefore MARYLAND CASUALTY COMPANY, a judgment creditor, may use the normal processes of law and garnish the funds of THE SEMINOLE TRIBE OF FLORIDA, INC., a judgment debtor.

If the word "attachment" as contained in the proviso is to be interpreted as encompassing the word and meaning of "garnishment", then in that event the proviso still contains no prohibition against MARYLAND CASUALTY COMPANY, the judgment creditor, attaching or garnishing the checking account of the judgment debtor, THE SEMINOLE TRIBE OF FLORIDA, INC.

By the very words of the Charter proviso itself, to-wit: "shall not be deemed a consent" the judgment debtor is not prohibited from doing anything, let alone being pro-

hibited to levy a judgment by garnishment or attachment. The proviso specifically neither negates nothing nor prohibits anything, for it is merely stating that it is not giving its consent.

If THE SEMINOLE TRIBE OF FLORIDA, INC. were a natural individual with a judgment duly entered against him then garnishment would lie. MARYLAND CASUALTY COMPANY has heard of no state in the United States, including in a corporate charter granted by a state, an immunity from levy of judgment by garnishment or attachment once the corporation may sue or be sued. The same holds true for national corporations.

Immunity does not follow as a matter of law, as a matter of fact and as a matter of national policy as applied to national corporations

In the Annotation to the Supreme Court Reports, 84 L.Ed. 730, Footnote 10 it states as follows:

> "As respects the forty government corporations listed in Keifer & Keifer v. Reconstruction Finance Corp., supra (306 U.S. 390, 391, 83 L.Ed. 789, 790, 59 S. Ct. 516), where Congress included the authority to 'sue and be sued', express prohibition against attachment and garnishment was provided in only two instances. They are the Federal Crop Insurance Corporation (February 16, 1938), 52 Stat. at L. 72, 73, Chap. 307, U.S.C.A., Section 1501, and the Farmer's Home Corporation (July 22, 1937), 50 Stat. at L. 527, Chap. 517, 7 U.S.C.A., Section 1014.

For the purpose of argument, assume that an individual Indian was the judgment debtor in lieu of the Indian corporation, could the judgment be enforced against an individual Indian? Petitioner has been unable to find any statutory law or case law which grants to an individual Indian immunity from suit and the incidental judicial processes that are available for the purposes of enforcing judgments.

QUESTION No. 2

Did the Secretary of the Interior in issuing the corporate charter to The Seminole Tribe of Florida, Inc. unlawfully qualify the waiver of immunity to suit of the latter and thereby discriminate against those persons who may be judgment creditors of The Seminole Tribe of Florida, Inc. and deny those persons the equal protection of the law?

The Act, 25 U.S.C.A., Indians, Section 477, does not provide for any sovereign immunity to be transferred to the corporations created thereunder. However, the Lower Court in effect stated that Indian corporations created under the Act in question are endowed with sovereign immunity from suit, which we feel is an erroneous conclusion.

Nothing contained in the enabling act specifically allows the incorporated tribe to sue and be sued but Congress certainly intended the corporation to sue and be sued when they expressly authorized the Secretary of the Interior and the tribe to include in the Charter rights "to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law." Certainly "powers as may be incidental to the conduct of the corporate business" include the power to sue and be sued.

It is not necessary for a legislative body, when creating a corporation or authorizing the organization thereof, to provide expressly that it shall have power to sue and be sued in order that it shall be subject to suit, for power to sue and be sued may be implied. *Kiefer* v. *Reconstruction*

Finance Corp., 306 U.S. 381-397. Moreover it has been held that the power to sue and be sued is an implied power of every corporation, including governmental corporations, and that the mere creation of a corporation confers the power to sue and be sued unless it is expressly withheld. Although it is customary to state the incidental powers of a corporation it is not necessary to do so. The grant of corporate existence in itself is the grant of power to sue and be sued. These incidents, unless expressly withheld, exist without specific enumeration. *Casper* v. *Regional Agriculture Credit Corporation*, 202 Minn. 433, 278 N.W. 896; see Annotation to Supreme Court Reports, 83 L. Ed. 808-809.

To grant the corporation the power to sue or to be sued means nothing if there is a limitation imposed on the execution of any judgment resulting therefrom.

The Lower Court refused to recognize any distinction between THE SEMINOLE TRIBE OF FLORIDA, INC. as a quasi-sovereign nation and the fact that the Respondent is a corporate entity, created for the purpose of transacting business for profit.

The lower Court bases its opinion primarily upon two cases, *Williams* v. *Lee*, 358 U.S. 217, 219 and *United States* v. *United States Fidelity & Guaranty Co.*, 309 U.S. 506, 512, 513. These cases are not pertinent to the questions involved in this case. These cases deal with the question of sovereign immunity of an Indian Tribe and whether a State Court has jurisdiction over an Indian Tribe. It is contended that the Lower Court erred in finding that these Indian corporations created for the purpose of engaging in business for profit possess the quasi-sovereign immunity that Congress endowed the Indian Tribes with years ago when they were considered nations

QUESTION No. 3

Where The Seminole Tribe of Florida, Inc. pledged and assigned to the United States of America certain monies in a checking account but reserved the right to withdraw or draw on the monies did the United States of America have a prior right to the monies over a judgment creditor of the corporation who had garnished the monies?

Petitioner's right to the funds that have been garnished is prior and superior to any claim, right or lien the UNITED STATES OF AMERICA may have to the funds. THE SEMINOLE TRIBE OF FLORIDA, INC. had control of the funds, and therefore any pledge or assignment of the funds under the document entitled General Assignment and Assignment of Income R-61 and Deposit Agreement R-56 were never perfected. The only right that the UNITED STATES OF AMERICA had in these funds was the right to make a written demand for the monies on deposit upon the CITIZENS NATIONAL BANK OF WEST HOLLYWOOD in case THE SEMINOLE TRIBE OF FLORIDA, INC. defaulted under the loan agreement with the UNITED STATES OF AMERICA. The demand was made by the UNITED STATES OF AMERICA for the payment of these monies but this demand was not made until after the writ of garnishment was served upon the CITIZENS NATIONAL BANK OF WEST HOLLYWOOD.

In regards to the document entitled General Assignment and Assignment of Income, it provides that THE SEMINOLE TRIBE OF FLORIDA, INC. shall execute such specific assignments as may be requested from time to time which shows that it was the intention of the parties that this document would not constitute a specific assignment effective as of the time that it was executed, but that it was only an agreement to assign if an assignment was requested in the future.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

DWIGHT L. ROGERS, JR.

DWIGHT L. ROGERS, JR.
Counsel for Petitioner

APPENDIX A

Constitutional Provisions

Article 1, Section 8, Clause 3. REGULATION OF COMMERCE. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

Amendment V. DUE PROCESS OF LAW. * * * nor be deprived of life, liberty, or property, without due process of law. * * *

Statute

25 U.S.C.A., Section 477. INCORPORATION OF INDIAN TRIBES; CHARTER; RATIFICATION BY ELECTION. The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation to such tribe: provided, That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for a period exceeding ten years any of the land included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress. June 18, 1934, c. 576, Section 17, 48 Stat. 988.

APPENDIX B

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 21992

MARYLAND CASUALTY COMPANY,
Appellant,

versus

CITIZENS NATIONAL BANK OF WEST HOLLYWOOD, ET AL.,
Appellees.

Appeal from the United States District Court for the Southern District of Florida.

(May 13, 1966.)

Before PHILLIPS,* RIVES and COLEMAN, Circuit Judges.

PHILLIPS, Circuit Judge: The question here presented is whether the Seminole Tribe of Florida, Inc.,[1] was immune from an ancillary action in garnishment to satisfy a judgment obtained against it. Seldomridge Construction Company,[2] as prime contractor, entered into a written con-

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*Of the Tenth Circuit, sitting by designation.

1. Hereinafter called the Seminole Tribe.
2. Hereinafter called Seldomridge.

tract with the Seminole Tribe to construct for the latter an office building and an arts and crafts center. Pursuant to the terms of the prime contract, Seldomridge, as principal, and Maryland Casualty Company,[3] as surety, entered into a performance and payment bond with the Seminole Tribe, one condition of which was that Seldomridge would pay for all labor and materials incorporated in the buildings.

Article V of the prime contract, which was incorporated in the bond, in part provided that "before issuance of final certificate, the contractor shall submit evidence satisfactory to the architect that all payrolls, material bills * * * have been paid."

Unit Structures, Inc.,[4] furnished materials to Seldomridge, which were incorporated in the buildings, of the reasonable value of $14,004.15, for which it had not been paid. The President of Seldomridge represented to the Seminole Tribe that Seldomridge had a damage claim against Unit Structures that would more than satisfy the latter's claim for materials. Thereafter, on September 22, 1960, Seldomridge, by a written contract, agreed to indemnify the Seminole Tribe from any liabilities, loss, damage or expense which it might sustain by reason of any claim made by Unit Structures. Thereafter, the Seminole Tribe paid Seldomridge the final payment due on the construction contract.

In the original action brought by Unit Structures, it recovered a judgment against Maryland for $14,004.15, the amount due on its claim for materials, plus interest, attorneys' fees, and costs, aggregating $19,482.90, and Mary-

3. Hereinafter called Maryland.
4. Hereinafter called Unit Structures.

land, as third party plaintiff, recovered a judgment against the Seminole Tribe for $17,332.90.[5]

Prior to the execution of the construction contract, the Secretary of the Interior had issued to the Seminole Tribe a charter of incorporation under the provisions of 25 U.S. C.A. § 477, and at all times here material it was a body corporate.

Maryland, after recovering judgment against the Seminole Tribe, caused a writ of garnishment to issue and to be served against the Citizens National Bank of West Hollywood,[6] seeking to recover tribal funds on deposit in such bank to satisfy its judgment.

At the time the writ was served, all of the funds deposited in the Bank to the credit of the Seminole Tribe had been deposited by the United States as a part of a revolving credit fund for the Seminole Tribe, under a deposit agreement that provided:

> "The Seminole Tribe of Florida, Inc. hereby assigns, transfers and pledges the aforesaid deposit or deposits, hereby or hereafter made, to the 'United States of America' as security for the repayment of any and all indebtedness for which it may obligate itself to the United States of America and for the performance of the Corporation's obligations in connection with such indebtedness until such time as deposit or deposits are released, as hereafter provided."

It further provided that "'upon written demand of the Superintendent of the Seminole Indian Agency the bank" should "pay over the balance" of the deposit, "or any part thereof demanded, in accordance with the demands."

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5. Judgments were also awarded Maryland against Seldomridge and in favor of the Seminole Tribe against Seldomridge.

6. Hereinafter called the Bank.

The United States was not a party to the action, but on June 5, 1964, it filed in the action a document entitled, "Representation of Interest of the United States," in behalf of itself and the Seminole Tribe, in which it set up that the Seminole Tribe received a loan of $100,000 from the United States from the revolving credit fund maintained by the Bureau of Indian Affairs; that the amount of the loan was deposited in the Bank, pursuant to the terms of the deposit agreement, and an assignment of the deposit to the United States as security for the repayment of the loan; that the agreement also provided for withdrawal of the deposit upon the written demand of the Superintendent of the Seminole Indian Agency; that on May 28, 1964, the Superintendent made a written demand on the Bank for the withdrawal of the balance of such deposit; that the Bank refused to deliver to the Superintendent the entire balance and withheld a sum from such balance to cover the amount of Maryland's judgment against the Seminole Tribe.

The United States asserted in the document in behalf of the Seminole Tribe and itself that the funds on deposit were not subject to garnishment. The Seminole Tribe filed a motion to dismiss the garnishment proceeding.

The court held that under Article VI, Sec. 9 of the Charter, set out *infra*, the funds were immune from garnishment and that the United States had a lien on the deposit, which was prior to the judgment of Maryland, and dismissed the ancillary garnishment proceeding with prejudice. Maryland has appealed.

The paramount authority of the federal government over Indian tribes and Indians is derived from the Constitution, and Congress has the power and the duty to

enact legislation for their protection as wards of the United States.[7]

From the beginning of our government, Indian nations or tribes have been regarded as dependent political communities or nations; and as possessing the attributes of sovereignty, except where they have been taken away by Congressional action.[8] They are quasi-sovereign nations.[9]

Indian nations, as an attribute of their quasi-sovereignty, are immune from suit, either in the federal or state courts, without Congressional authorization.[10]

25 U.S.C.A., § 477, in part here pertinent, provides

> "The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation to such tribe: * * *. Such charter may convey to the incorporated tribe the power to purchase, * * * own, hold, manage, operate, and dispose of property of every description, real and personal, * * * and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, * * *."

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7. Williams v. Lee, 358 U.S. 217, 219, n. 4; Perrin v. United States, 232 U.S. 478, 482; United States v. Kagama, 118 U.S. 375; Taylor v. Tayrien, 10 Cir., 51 F.2d 884, 887; Bryan County Okl. v. United States, 10 Cir., 123 F.2d 782, 785.

8. Choctaw and Chickasaw Nations v. Seitz, 10 Cir., 193 F.2d 456, 458; Cherokee Nation v. Kansas Railway Co., 135 U.S. 641, 653; Native American Church v. Navajo Tribal Council, 10 Cir., 272 F.2d 131, 133; Iron Crow v. Oglala Sioux Tribe of Pine Ridge Res., 8 Cir., 231 F.2d 89, 92.

9. United States v. United States Fidelity & Guaranty Co., 309 U.S. 506, 512, 513; Ex parte Reynolds, C.C. Ark., Fed. Cas. No. 11,719; Cf. Cherokee Nation v. State of Georgia, 5 Pet. 1, 7.

10. United States v. United States Fidelity & Guaranty Co., supra; Iron Crow v. Oglala Sioux Tribe of Pine Ridge Res., supra, p. 94; Cf. Williams v. Lee, supra; Haile v. Saunooke, 4 Cir., 246 F.2d 293, 297; Colliflower v. Garland, 9 Cir., 342 F.2d 369, 376.

The Seminole Tribe was incorporated pursuant to that section. The statute gave no powers to the corporation. It provided that the Secretary of the Interior "may" convey powers to the corporation by the charter; and it is clear that the powers granted to the corporation were only those which the Secretary of the Interior, by the terms of the charter, conveyed to them.

The charter, by Article VI thereof, defined the powers of the corporation. In part here material, it reads:

> "Section 1. This tribal corporation, subject to any restrictions contained in the Constitution and the laws of the United States or in the Constitution and Bylaws of the said tribe, shall have the following corporate powers.
>
> * * *
>
> "Sec. 9. To sue or be sued; but the grant or exercise of such power to sue and to be sued shall not be deemed a consent by the said corporation or the United States to the levy of any judgment, lien or attachment upon the property of the Seminole Tribe of Florida, Inc., other than income or chattels especially pledged or assigned."

The waiver of the immunity to being sued was expressly qualified, and excluded from the waiver was the levy of any judgment, lien or attachment upon the property of the Seminole Tribe of Florida.

Counsel for the appellant urges that garnishment is not specifically named in the exclusionary clause and, therefore, is not excluded. We think there are two answers to that contention.

First, garnishment is closely akin to attachment. It "is directly founded upon the writ of attachment as by cus-

tom of London."[11] It is frequently defined as an attachment of goods, credits or effects belonging to the defendant or judgment debtor in the hands of a third person.[12] The courts have characterized it as a species of attachment;[13] and in the nature of an attachment[14] or execution.[15]

But even more persuasive is the fact that the qualifying clause was written into Section 9 by the Secretary of the Interior to protect the property of the Seminole Tribe, other than income or chattels especially pledged or assigned; and hence it must be liberally construed in favor of the Seminole Tribe and all doubtful expressions therein resolved in favor of the Seminole Tribe.[16]

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11. Bouvier's Law Dictionary, Rawle's 3rd Rev., Vol. 1, pp. 1334, 1335.

12. Kennedy v. Brent, 6 Cra. 187, 10 U.S. 106; Beamer v. Winter, 41 Kan. 596, 21 P. 1078; Blaisdell v. Ladd, 14 N.H. 129; Berry-Beall Dry Goods Co. v. Adams, 87 Okl. 291, 211 P. 79; National Bank of Wilmington & Brandywine v. Furtick, 2 Marv. (Del.) 35, 42 A. 479, 481; Posselius v. First National Bank, 264 Mich. 687, 251 N.W. 429, 430; J. T. Sinclair Co. v. I. T. Becker Coal Co., 263 Mich. 617, 249 N.W. 13, 14.

13. Ex parte Cincinnati, S.&M. Ry. Co., 78 Ala. 258, 259; Citizens' National Bank of Godley v. Pollard, Tex.Civ.App., 31 S.W.2d 508, 510; Farmers' National Bank v. Tennison, 90 Okl. 216, 217 P. 182, 183; Public Finance Co. v. Jump, 192 Okl. 368, 136 P.2d 706, 710; Allen v. Stracener, 214 Ark. 688, 217 S.W.2d 620, 621; First National Bank of Duncan v. Wallace, 191 Okl. 105, 127 P.2d 156, 158; Posselius v. First National Bank, supra; See also, National Bank of Wilmington & Brandywine v. Furtick, supra.

14. Newport v. Semones, 39 Tenn. App. 647, 286 S.W.2d 876, 880; J. T. Sinclair Co. v. I. T. Becker Coal Co., supra; Coller v. Sheffield Farms Co., 129 Misc. 600, 223 N.Y.S. 305, 310; Davis Brothers v. Choctaw O. & G.R. Co., 73 Ark. 120, 83 S.W. 318, 319; Central Trust Co. v. Chattanooga R.C.R. Co., 6 Cir., 68 F. 685, 687; See also, Dean v. Opdycke, 151 Wash. 504, 276 P. 545, 546.

15. Davis Brothers v. Choctaw O. & G.R. Co., supra; Coller v. Sheffield Farms Co., supra.

16. Squire v. Capoeman, 351 U.S. 1, 6, 7; Haley v. Seaton, C.A.D.C., 281 F.2d 620, 623; Arenas v. Preston, 9 Cir., 181 F.2d 62; United States v. Oregon Short Line R. Co., 9 Cir., 113 F.2d 212, 214; Big Eagle v. United States, Ct. Cl., 300 F.2d 765; United States v. Gilbertson, 7 Cir., 111 F.2d 978, 980.

The fact that the Seminole Tribe was engaged in an enterprise private or commercial in character, rather than governmental, is not material. It is in such enterprises and transactions that the Indian tribes and the Indians need protection. The history of intercourse between the Indian tribes and Indians with whites demonstrates such need. It is obvious that the President of Seldomridge imposed on the Seminole Tribe when he induced it to pay Seldomridge the unpaid balance on the construction contract, with Unit Structures' claim outstanding. To construe the immunity to suit as not applying to suits on liabilities arising out of private transactions would defeat the very purpose of Congress in not relaxing the immunity, namely, the protection of the interests and property of the tribes and the individual Indians. The Supreme Court has not hesitated to hold the immunity applicable in actions for liabilities arising out of private transactions.[17]

We conclude the Seminole Tribe was immune from the garnishment proceeding. It becomes unnecessary to pass on the claim of the United States to a prior lien on the deposit.

AFFIRMED.

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17. United States v. United States Fidelity & Guaranty Co., supra; Williams v. Lee, supra.

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 423

MARYLAND CASUALTY COMPANY, PETITIONER

v.

SEMINOLE TRIBE OF FLORIDA, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS *AMICUS CURIAE*

INTEREST OF THE UNITED STATES

The Seminole Tribe of Florida, Inc., respondent in this action, is a recognized tribe of Indians under the general supervision of the United States Department of the Interior. Its corporate charter, the effect of which is the principal issue in this case, was issued by the Secretary of the Interior under the Indian Reorganization Act of June 18, 1934, Section 17, 48 Stat. 988, 25 U.S.C. 477 (Pet. App. A). And the funds sought to be garnished here were drawn from the revolving credit fund maintained by the Bureau of Indian Affairs and deposited to the Tribe's credit pursuant to an agreement between the Tribe and the Bureau. In view of the government's relationship to the sub-

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ject matter in litigation and our general responsibility for the welfare of the Indian tribes, we filed a "Representation of Interest" in the district court (R. 27–30) and participated as *amicus curiae* in the court of appeals. For the same reasons, we submit the present memorandum.[1]

STATEMENT

This action concerns an ancillary garnishment proceeding against bank deposits of the Seminole Tribe of Florida, Inc. After the Tribe was incorporated under the Indian Reorganization Act, it entered into a prime contract with Seldomridge Construction Company for the construction of an office building and an arts and crafts center. Under Article V of the prime contract, the Tribe was not to make final payment until it had received satisfactory evidence that all subcontractors' bills had been paid. This article was also incorporated in a performance and payment bond agreement, to which petitioner, Seldomridge and the Tribe were parties.

Seldomridge represented to the Tribe that it had a claim against a certain subcontractor which would more than offset the subcontractor's claim for payment under the contract in question and agreed to indemnify the Tribe for any liability which might result from the subcontractor's claim. On the basis of this representation and agreement, the Tribe paid Seldomridge on the prime contract. Seldomridge subsequently became insolvent, and the subcontractor,

[1] Although petitioner denominated and served the United States as a respondent in this Court, the government is not, and has never been, a party in this action. Here, as in the courts below, our role is that of an *amicus curiae*.

who had not been paid, recovered a judgment against petitioner as surety. Petitioner, in turn, recovered a judgment on the bond agreement against the Tribe, and the Tribe recovered a judgment on its indemnity agreement against Seldomridge.

To satisfy its judgment, petitioner filed a writ of garnishment attaching the tribal funds on deposit in a national bank. All the funds in question were the proceeds of a $100,000 loan from the United States to the Tribe and were subject to a deposit agreement between the United States, the Tribe and the bank. The deposit agreement expressly provided that the United States had the right to demand withdrawal of all the funds so deposited at any time.

The district court granted the Tribe's motion to dismiss the writ of garnishment on the grounds that, under the Tribe's charter, tribal funds not specially assigned or pledged were immune from attachment by garnishment and that, in any event, the United States had a prior lien on the funds as a result of its deposit agreement (R. 64–65). The court of appeals affirmed, holding that the garnishment action could not lie (Pet. App. B; 361 F. 2d 517).

DISCUSSION

The decisions below are correct, and further review by this Court is not warranted. The Tribe is a sovereign nation and is immune from suit except when expressly authorized by Congress. *United States* v. *United States Fidelity Co.*, 309 U.S. 506, 512–513; *Turner* v. *United States*, 248 U.S. 354, 357–358; *Colliflower* v. *Garland*, 342 F. 2d 369, 376 (C.A. 9). The Indian Reorganization Act does not in itself

waive the Tribe's immunity to suit. It merely authorizes the Secretary of the Interior to issue a charter which may convey to the Tribe, *inter alia*, "such further powers as may be incidental to the conduct of corporate business" (25 U.S.C. 477). The protection of sovereign immunity is lowered only to the extent required by the charter itself.

The Tribe's charter, while giving it the power "[t]o sue or be sued," provides the following explicit limitation (R. 40):

> * * * [B]ut the grant or exercise of such power to sue and to be sued shall not be deemed a consent by the said corporation or the United States to the levy of any judgment, lien or attachment upon the property of the Seminole tribe of Florida, Inc., other than income or chattels especially pledged or assigned.

Since the funds on deposit in this case were not specially pledged or assigned, it is clear that the limited waiver of immunity in the tribal charter did not apply. Therefore the writ of garnishment was properly dismissed.

Contrary to petitioner (Pet. 5), there is no unfairness in limiting the Tribe's amenability to garnishment proceedings. Tribal immunity from suit is well recognized, and anyone interested in dealing with the Tribe can easily ascertain the extent to which this immunity has been waived by examining the charter. Nor is the charter limitation an unwarranted or unusual one. That provision was expressly designed to protect tribal property—an object clearly within the proper authority of the Secretary. *Squire* v. *Capoeman*, 351 U.S. 1, 6, 7; *Tiger* v. *Western Investment*

Co., 221 U.S. 286, 315–317; *United States* v. *Sandoval*, 231 U.S. 28, 46; *Heckman* v. *United States*, 224 U.S. 413, 434; *La Motte* v. *United States*, 254 U.S. 570, 576–577; *United States* v. *Candelaria*, 271 U.S. 432, 440. As petitioner recognizes (Pet. 7), a number of federal government corporations with the authority to sue and be sued remain absolutely immune from any attachment or garnishment.[2] And this Court has expressly upheld a statute restricting garnishment ancillary to judgments against a government corporation to specified funds. *Federal Housing Administration, Region No. 4* v. *Burr*, 309 U.S. 242. The Court's holding in *Burr* is apposite here: "[S]ince [the party] obtains its right to sue from Congress, it necessarily must take it subject to such restrictions as have been imposed" (309 U.S. at 251).

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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[2] Commodity Credit Corporation (see 15 U.S.C. 714b(c)), Federal Crop Insurance Corporation (see 7 U.S.C. 1506(d)), and the former Farmers' Home Corporation (see Act of July 22, 1937, ch. 517, § 40(f)(3), 50 Stat. 527, repealed by 75 Stat. 318). Cf. Federal Deposite Insurance Corporation (12 U.S.C. 1819).

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